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C. ROBERT PETTIT, M.D.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

C. ROBERT PETTIT, M.D.,

Plaintiff,

vs.

CONTRA COSTA MEDICAL SERVICES
REGIONAL MEDICAL CENTER and DOES
ONE THROUGH TWENTY, Inclusive
Defendants

Case No.: C 07 3358 JSW

**DECLARATION OF C. ROBERT
PETTIT, M.D. IN SUPPORT OF
PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANTS
MOTION FOR SUMMARY JUDGMENT
AND/OR SUMMARY ADJUDICATION OF
THE ISSUES**

I, C. ROBERT PETTIT, M.D., hereby declare as follows:

1. I am the Plaintiff in the above caption case and if sworn to testify would testify as follows. I am a medical doctor properly licensed in the state of California and I am board certified as a specialist in the diagnosis and treatment of medical dysfunctions and injuries to the ear, nose and throat of human patients.

DECLARATION OF C. ROBERT PETTIT, M.D.

- 1 2. Since 1975 have held an academic appointment at UCSF School of Medicine as
2 Assistant Clinical Professor. Since 2002, I have been a Medical Consultant for the
3 Enforcement Division of the Medical Board of California, a position that requires me
4 to make decisions about what practice behavior constitutes a departure from the
5 standard of care for physicians. From February 1, 2005 through March 3, 2007, I also
6 held a contract position of Ear Nose and Throat (ENT) Specialist for the Contra Costa
7 Regional Health Center (CCRHC).
- 8 3. I was hired as an ENT by Defendant, CONTRA COSTA MEDICAL SERVICES
9 REGIONAL MEDICAL CENTER and we entered into a written agreement on
10 February 1, 2005. A true and correct copy of that agreement is attached to this
11 declaration as Exhibit 1. The term of the contract ran from February 1, 2005 through
12 January 31, 2008, with a limit of compensation of \$1,117,000. The rate of pay
13 included \$1,250.00 to be paid to me by Defendant for each 4 hour clinic, \$312.50 per
14 hour. I am informed, believe and thereon allege that the contract was approved and
15 accepted by Contra Costa County on or before February 1, 2005. All of my hours
16 were mandated by Dr. Corcoran and the the medical center and I could not and did
17 not determine when I would work. I was assigned nurses by the medical center and I
18 had no input as to which nurses or other staff would be assigned to me. Different
19 nurses worked with me on different shifts, as assigned by the medical center. All of
20 the credientials and other requirements for my position were determined by the
21 defendant medical center. I was required to remain a member in good standing on the
22 medical center staff as a term of employment.
- 23 4. Prior to being offered an employment contract with Defendant, I worked for six
24 months as a temporary, *locums tenen*, through an employment agency. Dr. Corcoran,
25 then ENT Section Chief, approved offering him a three year contract. Prior to my
26 complaints and whistle blowing activities, my working relationship with the CCRHC
27 staff was entirely positive and cordial, including socializing and reciprocal dinners
28 with the medical staff. Prior to my whistle blowing activities, I did not receive any

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1 negative feedback from Dr. Corcoran, Dr. Berguer, or Dr. Smith, my immediate
2 supervisors. I never received any written criticism.

3 5. I was 66 years old at the time of the premature termination of employment with
4 Defendant, on or about March 3, 2007.

5 6. Defendant CONTRA COSTA MEDICAL SERVICES REGIONAL MEDICAL
6 CENTER is located in Martinez, California. It is an emergency services hospital,
7 class 2. At all times during my contract, Defendant's own policy required all
8 specialist who responded to emergency room requests for consultations to live within
9 30 minutes from the medical facility. ENT who fit that requirement at CCRHC other
10 than Plaintiff are: 1) Dr. Martha Corcoran, ENT Section Chief, who works at CCRHC
11 part-time and takes emergency calls from her home in Davis; and 2) Dr. William
12 Keating, who is full time and takes emergency calls from his home in Point
13 Richmond. The ENT surgery specialists report to Dr. Berguer, Chief of Surgery, who
14 takes emergency calls from his home in Novato. Davis, Point Richmond, and Novato
15 are each more than thirty minutes from the hospital in Martinez.

16 7. I became generally aware that the standard of care was repeatedly being compromised
17 because of the distance that on-call doctors live from the facility, in excess of the
18 thirty minute response time required by Defendant. I was driven to action by the
19 severity of three incidents that occurred on August 29, 2006, when Dr. Keating, the
20 ENT doctor on emergency call, did not leave his Point Richmond home and drive to
21 Martinez to see three ENT emergency patients who presented to the emergency room
22 that night, all having potentially life-threatening problems. Dr. Keating also did not
23 come to the hospital to see the patients the next morning, and he then left for vacation
24 in the afternoon without notifying me or any of the ENT doctors on call, about the
25 patients. As a result, one patient with a nose-bleed bled to the point of anemia that
required hospitalization, and she had painful packing placed in both nostrils by non-
specialists. The second patient had a peritonsillar abscess, a painful collection of pus
behind the tonsil, which caused swelling in his throat that was severe enough to cause
symptoms of airway obstruction and swallowing difficulty and required admission to

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1 the intensive care unit and could have required immediate draining, or even
2 emergency tracheostomy due to the threat to the airway. The third patient, a diabetic,
3 did not receive ENT evaluation of a severe facial infection that required immediate
4 judgment about treatment, and possible incision and draining. Dr. Keating was called
5 repeatedly by the emergency room doctor and did not come to the hospital to see the
6 patients.

- 7 8. Because these were not the first such incidents, I sent an email to Dr. Corcoran on or
8 about September 5, 2006 notifying her of these dangerous incidents of substandard
9 care. A true and correct copy of that email is attached as Exhibit 2. When I did not
10 receive an effective response about these life-threatening issues, I brought up the care
11 issue at an ENT section meeting on or about September 20, 2006. A true and correct
12 copy of the minutes prepared of that meeting, showing the issue was discussed, is
13 attached as Exhibit 3. This resulted in Dr. Keating refusing to change his behavior
14 and threatening me with “warfare” during the meeting, saying: “live by the sword, die
15 by the sword”.

- 16 9. After that meeting, Dr. Keating began writing inflammatory emails to Plaintiff
17 questioning his management of patients, and sending copies to Dr. Corcoran and Dr.
18 Berguer. Dr. Berguer then called Dr. Pettit into his office and verbally threatened to
19 fire Dr. Pettit for his “style of practice” and “inability to get along with Dr. Keating;”
20 and he falsely stated that I was not carrying his weight within the ENT section. In
21 fact I was handling more emergency treatments, conducting more surgeries and
22 seeing a bigger case load of patients than most, if not all, ENT doctors on staff.

- 23 10. I became alarmed by the obvious retaliatory actions by Dr. Keating and Dr. Berguer
24 over my whistle blowing activities and after this meeting with Dr. Berguer, I

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1 submitted a formal, written complaint to him dated November 29, 2006, documenting
2 the three incidents of August 29, 2006 and stating that the medical center policies, the
3 failure to enforce the policies and the sub-standard practices were contributing to
4 patient/public endangerment and to a deviation from standard of care. My letter also
5 included a list of all ENT surgical procedures performed in the past year, showing
6 that I had performed more surgical procedures than Corcoran and Keating combined,
7 and seen more clinic patients. Subsequently I presented the same letter to Dr. Jeffrey
8 Smith, Chief of Staff on or before December 1, 2006. A true and correct copy of that
9 letter is attached as Exhibit 4.

- 10 11. In my capacity as a consultant with the Medical Board for the State of California, it is
11 my job to evaluate complaints against ENT doctors practicing in the state and to
12 determine and opine as to whether or not an individual's medical care is above or
13 below the standard of care. Despite my vast experience and position with the
14 Enforcement Division of the Medical Board of California, no credibility was given to
15 my valid complaints and instead, I was retaliated against by the management. The
16 medical center ratified and condoned management's conduct and elected to terminate
17 my contract and did not investigate or respond in any way to my complaints. No
18 disciplinary action was taken against Dr. Keating, and Defendant made no effort to
19 remedy the problem brought to bear and to improve medical care. In fact, Dr. Jeff
20 Smith, an Administrator and Assistant Chief of Staff for Defendant, falsely stated to a
21 Department of Public Safety Inspector, who was investigating Plaintiff's complaints,
22 that CCRHC had "no problems" concerning emergency on-call response, and when
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1 asked specifically if any doctors lived outside the 30 minute limit, Dr. Smith said
2 “no,” thus materially interfering with a Department of Public Safety investigation.

3 12. I was allegedly terminated on March 3, 2007 by a letter allegedly dated January 3,
4 2007, which I received on or about January 29, 2007. I was only paid through March
5 3, 2007, notwithstanding the fact the medical center alleges I was terminated March
6 23, 2007.

7 13. The medical center has now further concealed the safety issue by changing the policy
8 to accommodate the medical staffs’ inability to respond to the hospital within the 30
9 minute limit. As a result, the danger to the public has continued unabated.

10 For example, a 54-year-old man, who had undergone a tracheostomy two days
11 previously by Dr. Keating, unnecessarily bled to death on the ward while the on-call
12 ENT doctor stayed at his distant home. Another patient was seen in the emergency
13 room on or about January 27, 2007 because of pain, swelling, and dysphasia that had
14 been worsening over several days. The patient was sent home after a telephone
15 consultation with Dr. Keating, the ENT doctor on call. Several days later, still having
16 throat pain, Dr. Pettit saw the patient routinely in the out-patient clinic, and he
17 removed a large, imbedded fishbone from the tongue base that had caused the
18 symptoms.
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25 DECLARATION OF C. ROBERT PETTIT, M.D.

1 I declare under penalty of perjury under the laws of the United States and California that
2 the foregoing is true and correct and this declaration was executed at Los Angeles,
3 California on the date set forth below.

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5 Dated: August 4, 2008

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8 C. ROBERT PETTIT, M.D.

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DECLARATION OF DR. C. ROBERT PETTIT IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S FOR
SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT
Pettit v. Contra Costa Medical Services Regional Medical Center

Case No. C 07 3358 JSW